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CAHILL, VON HELLENS & GLAZER
155 Park One
2141 E. Highland Avenue
Phoenix, AZ 85016

In re Application of:	:	
AROUSSE, Abdelwahab, et al.	:	DECISION ON PETITION UNDER
U.S. Application No.: 10/527,444	:	37 CFR 1.47(a)
PCT No.: PCT/GB03/03919	:	
International Filing Date: 09 September 2003	:	
Priority Date: 09 September 2002	:	
Attorney's Docket No.: 6817-A-1	:	
For: FLOW HOMOGENISER	:	

This decision is issued in response to applicants' "Petition Under 37 CFR 1.47(a)" filed 28 September 2005. Deposit Account No. 03-0088 will be charged the required petition fee.

BACKGROUND

On 09 September 2003, applicants filed international application PCT/GB03/03919. The application claimed a priority date of 09 September 2002 and designated the United States. On 18 March 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 09 March 2005.

On 09 March 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 31 May 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirement (Form PCT/DO/EO/905) indicating that an executed declaration in compliance with 37 CFR 1.497 and a translation of the international application into English were required.

On 28 October 2005, applicants filed a response to the Notification Of Missing Requirements (with required extension fee) which included a declaration executed by one of the three inventors, and the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the application without the signature of inventors Faycal BAHRI and Mohamed MENACER, whom applicants assert have refused to execute the application. The submission also correctly notes that, because the application was filed in English, an English translation of the international application (and the processing fee for late-filing of such translation) is not required here.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the nonsigning inventor; (3) an oath or declaration executed by the other inventors on behalf of themselves and the nonsigning inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Here, applicants have authorized a charge to Deposit Account No 03-0088 for required fees, filed the required petition fee, and the petition expressly states the last known addresses of the nonsigning inventors. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Applicants have filed a declaration executed by inventor Abdelwahab AROUSSI and containing unsigned signature blocks for the nonsigning inventors Faycal BAHRI and Mohamed MENACER. This declaration satisfies item (3).

Regarding item (4), where it is asserted that an inventor has refused to execute the application papers, section 409.03(d) of the MPEP states that a "copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney." The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, applicants have submitted a declaration of Caroline Marshall setting forth the attempts made to obtain the inventors' signatures. In her declaration, Ms. Marshall states that she used the Royal Mail recorded delivery service to send the nonsigning inventors a declaration, a request for signature, and a copy of the complete application papers. However, the attached cover letters identify as enclosures only the declaration and a return envelope; these letters do not reference an enclosed copy of the complete application papers. Clarification of this conflict in the submission must be provided before it can be concluded that copies of the complete application papers were included in these mailings, as required.

In addition, while applicant has provided a statement, and supporting tracking data, confirming the receipt of the mailing by nonsigning inventor Faycal BAHRI, no such confirmation has been provided with respect to nonsigning inventor Mohamed MENACER. Thus, even if applicants adequately confirm that these mailings included the required copy of the complete application papers, further evidence is required to demonstrate that the mailing has been properly provided to nonsigning inventor Mohamed MENACER (it is noted that, generally,

the failure of an inventor to respond to a single mailing, receipt of which has not been confirmed, is not considered a constructive refusal to sign the application).

Based on the above, the present record is not sufficient to demonstrate that the nonsigning inventors have refused to execute the application. Accordingly, item (4) of a grantable petition has not been satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the materials required to satisfy item (4) of a grantable petition, as discussed above and in the MPEP. No additional petition fee is required.

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a)

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Richard M. Ross
Attorney Advisor
Office of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459